

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION**

JUDITH W. BEATTIE,

Plaintiff,

v.

Case No: 5:19-cv-58-Oc-30PRL

**MICHAEL A. SHAW and
SOUTHEASTERN FREIGHT LINES,
INC.,**

Defendants.

ORDER

In this negligence action, Defendants have filed a motion requesting that the Court set a reasonable deposition fee for Plaintiff's expert, Dr. Frank Bono. (Doc. 27). As an initial matter, Local Rule 3.01(g) requires the moving party to confer with opposing counsel in a good faith effort to resolve the issues raised by the motion. Defendants certified that they conferred with counsel for Dr. Bono, not with opposing counsel. Accordingly, Defendants' motion is due to be denied for that reason alone.

Further, while Defendants cite to Florida law to support their request, they fail to include Rule 26 of the Federal Rules of Civil Procedure, which states "[u]nless manifest injustice would result, the court must require that the party seeking discovery" pay an expert a reasonable fee for depositions. Fed. R. Civ. P. 26(b)(4)(E). It is in the Court's discretion to determine the reasonableness of an expert's fee. *Cruz v. Home Depot*, No. 8:11-cv-1264-T-27TBM, 2011 WL 4836239, at *1 (M.D. Fla. Oct. 12, 2011). Here, while Defendants cite to general state orders determining an expert's fee to be reasonable at \$400-\$500, the Court has to determine a reasonable fee by considering the expert's area of expertise, education, and training; the prevailing rates of

other comparably respected experts; the nature and complexity of the discovery responses; the fee being charged to the party who retained the expert; and fees traditionally charged by the expert on related matters. *Id.* Here, Defendants included no information about the expert for the Court to determine whether the fee he is requesting is reasonable.

Accordingly, Defendants motion to determine reasonable deposition fees is DENIED without prejudice.

DONE and **ORDERED** in Ocala, Florida on November 12, 2019.



PHILIP R. LAMMENS
United States Magistrate Judge

Copies furnished to:

Counsel of Record
Unrepresented Parties